

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
David C. Boyd
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Qwest's Petition for Approval
of 2007 Additions to Non-Impaired Wire
Center List

ISSUE DATE: October 5, 2007

DOCKET NO. P-421/AM-07-865

ORDER SETTING COMMENT PERIOD

PROCEDURAL HISTORY

On June 22, 2007, Qwest asked the Commission to recognize that, pursuant to federal standards,¹ Qwest no longer had the duty to permit competitors to use certain elements of its plant ("unbundled network elements" or UNEs) in certain wire centers at cost-based rates. Qwest also asked the Commission promptly to issue an order limiting the disclosure of certain confidential and trade secret data that Qwest proposed to provide to support its request.

On July 26, 2007, the Commission issued an Order governing the handling of trade secret and confidential data.

On June 29, 2007, Qwest made a subsequent filing, and provided data in support of its request.

On July 27, 2007, the Commission received comments from DIECA Communications, Inc. d/b/a Covad Communications Company; Eschelon Telecom, Inc.; Integra Telecom of Minnesota, Inc.; McLeodUSA Telecommunications Services, Inc.; POPP.com, Inc.; TDS Metrocom; XO Communications of Minnesota, Inc.; and the Minnesota Department of Commerce (the Department). Among other things, these commentors requested additional time in which to analyze and address the issues raised by Qwest's filings.

¹ *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533 (2005), *aff'd Covad Communications Co. v. FCC*, 450 F.3d 528 (DC Cir. 2006).

This matter came before the Commission on September 13, 2007.

FINDINGS AND CONCLUSIONS

A. Positions of the Parties

Because this Order merely addresses the parties procedural concerns, only those concerns are discussed below.

Procedurally, Qwest proposes to have its request governed by the terms of a settlement pending in Docket No. P-999/CI-06-685 *In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*.² While acknowledging that the Commission has not yet adopted the settlement, Qwest argues that its interests would have been prejudiced if Qwest had waited any longer to make its filing. Under the terms of that settlement, Qwest's rights can be affected if Qwest fails to file a claim by July 1, and Qwest must seek a protective order from the Commission five business days before filing a claim.

The Department and various competitors acknowledge the time constraints identified by Qwest. But they also note that the settlement provides only 30 days for parties to file objections to Qwest's filing. This period will have expired before the date of the Commission meeting to consider the settlement's merits. While Qwest may feel constrained to file a claim under the terms of a settlement that has not yet been adopted, the parties object to filing their own comments under those conditions.

In addition, some parties raise concerns about the timeliness with which Qwest disseminated the trade secret information that forms the basis for Qwest's filing.

In remedy, these commentators ask the Commission to grant them 30 days after any approval of the settlement to respond to Qwest's proposal.

B. Commission Action

Today the Commission adopts the settlement discussed above.³ Its terms now govern any Qwest claim that an element no longer qualifies as a UNE.

² See *In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, Docket No. P-999/CI-06-685, Joint Motion for Approval of Settlement Agreement and Narrative Supporting Agreement (June 25, 2007); Notice of Joint Filing and Amended Request for Order Approving Settlement (June 26, 2007).

³ *Id.*, Docket No. P-999/CI-06-685, ORDER ADOPTING SETTLEMENT.

But given the regulatory uncertainty regarding this matter to date, and the delays incumbent in any procedures that restrict the dissemination of confidential information, the Commission finds merit in the parties' recommendation to start the 30-day comment period upon the adoption of the settlement. Given that no party has alleged that its interests would be prejudiced by this extension, the Commission will adopt this recommendation for purposes of the present docket.

ORDER

1. The settlement adopted today in Docket No. P-999/CI-06-685 *In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, shall govern the parties' rights in this docket, except that the date for parties to file comments shall be 30 days from the date of this Order.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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